

Conference Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 232

HOUSE BILL 2033

AN ACT

AMENDING SECTION 49-262, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY STANDARDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-262, Arizona Revised Statutes, is amended to
3 read:

4 49-262. Injunctive relief; civil penalties; recovery of
5 litigation costs

6 A. Whether or not a person has requested a hearing, the director,
7 through the attorney general, may request a temporary restraining order, a
8 preliminary injunction, a permanent injunction or any other relief necessary
9 to protect the public health if the director has reason to believe either of
10 the following:

11 1. That a person is in violation of:

12 (a) Any provision of article 2, 3 or 3.1 of this chapter.

13 (b) A rule adopted pursuant to section 49-203, subsection A,
14 paragraph 6.

15 (c) A rule adopted pursuant to article 2, 3 or 3.1 of this chapter.

16 (d) A discharge limitation or any other condition of a permit issued
17 under article 2, 3 or 3.1 of this chapter.

18 2. That a person is creating an actual or potential endangerment to
19 the public health or environment because of acts performed in violation of
20 this chapter.

21 B. Notwithstanding any other provision of this chapter, if the
22 director, the county attorney or the attorney general has reason to believe
23 that a person is creating an imminent and substantial endangerment to the
24 public health or environment because of acts performed in violation of
25 article 2, 3 or 3.1 of this chapter or a rule adopted or a condition of a
26 permit issued pursuant to section 49-203, subsection A, paragraph 2, 6 or 7,
27 the county attorney or attorney general may request a temporary restraining
28 order, a preliminary injunction, a permanent injunction or any other relief
29 necessary to protect the public health.

30 C. A person who violates any provision of article 2, 3 or 3.1 of this
31 chapter or a rule, permit, discharge limitation or order issued or adopted
32 pursuant to article 2, 3 or 3.1 of this chapter is subject to a civil penalty
33 of not to exceed twenty-five thousand dollars per day per violation. A
34 person who violates any rule adopted or a condition of a permit issued
35 pursuant to section 49-203, subsection A, paragraph 6 is subject to a civil
36 penalty of not to exceed five thousand dollars per day per violation. The
37 attorney general may, and at the request of the director shall, commence an
38 action in superior court to recover civil penalties provided by this section.

39 D. The court, in issuing any final order in any civil action brought
40 under this section, may award costs of litigation, including reasonable
41 attorney and expert witness fees, to any substantially prevailing party if
42 the court determines such an award is appropriate. If a temporary
43 restraining order is sought, the court may require the filing of a bond or
44 equivalent security.

1 E. All civil penalties except litigation costs obtained under this
2 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
3 state general fund.

4 F. EXCEPT AS APPLIED TO PERMITS ISSUED OR AUTHORIZED PURSUANT TO
5 ARTICLE 3.1 OF THIS CHAPTER, it shall be an affirmative defense to civil
6 liability under this section and section 49-261 for causing or contributing
7 to a violation of a water quality standard established pursuant to this
8 chapter, or a violation of a permit condition prohibiting a violation of an
9 aquifer water quality standard or limitation at the point of compliance or
10 a surface water quality standard if the release that caused or contributed
11 to the violation came from a facility owned or operated by a party that has
12 either:

13 1. Undertaken a remedial or response action approved by the director
14 or the administrator under this title or CERCLA in response to the release
15 of a hazardous substance, pollutant or contaminant that caused or contributed
16 to the violation of article 2 of this chapter and is in compliance with that
17 remedial or response action.

18 2. Otherwise resolved its liability for the release of a hazardous
19 substance that caused or contributed to the violation of article 2 of this
20 chapter in whole or in part by the execution of a settlement agreement or
21 consent decree with the director or administrator under this article, CERCLA
22 or any other environmental law and is in compliance with that settlement
23 agreement or consent decree.

24 THIS SUBSECTION DOES NOT PREVENT THE DIRECTOR FROM TAKING AN APPROPRIATE
25 ENFORCEMENT ACTION TO ADDRESS THE RELEASE OF A HAZARDOUS SUBSTANCE, POLLUTANT
26 OR CONTAMINANT OR THE VIOLATION OF A PERMIT CONDITION BEFORE OR AS AN ELEMENT
27 OF AN APPROVED REMEDIAL OR RESPONSE ACTION, SETTLEMENT AGREEMENT OR CONSENT
28 DECREE.

29 G. In determining the amount of a civil penalty for a violation under
30 article 3 or 3.1 of this chapter, the court shall consider the following
31 factors:

- 32 1. The seriousness of the violation or violations.
- 33 2. The economic benefit if any that results from the violation.
- 34 3. Any history of similar violations.
- 35 4. Any good faith efforts to comply with the applicable requirements.
- 36 5. The economic impact of the penalty on the violator.
- 37 6. The extent to which the violation was caused by a third party.
- 38 7. Other matters as justice may require.

39 H. A single operational upset that leads to simultaneous violations
40 of more than one pollutant limitation in a permit issued or authorized
41 pursuant to section 49-255.01 constitutes a single violation for purposes of
42 any penalty calculation.

1 I. If a permittee holds both a permit issued or authorized pursuant
2 to article 3 of this chapter and a permit issued or authorized pursuant to
3 article 3.1 of this chapter and the permittee violates a similar provision
4 in both permits simultaneously, the department shall not recover penalties
5 for violations of both permits based on the same act or omission.


APPROVED BY THE GOVERNOR MAY 20, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2002.

Passed the House March 18, 2002,

by the following vote: 50 Ayes,

0 Nays, 10 Not Voting


Speaker of the House


Chief Clerk of the House

Passed the Senate May 2, 2002,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting


President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2033

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 16, 2002,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

[Signature]
Speaker of the House

Norman L. Spore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 16, 2002

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate

Charmine Billings
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 17 day of May, 2002

at 8:45 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 20th day of
May, 2002,

at 10:10 o'clock A M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE
This Bill was received by the Secretary of State

this 20 day of May, 2002

at 3:54 o'clock P M.

[Signature]
Secretary of State

H.B. 2033